IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1701 of 1994
WITH
SPECIAL CRIMINAL APPLICATION No. 183 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

PRAKASH SILK MILLS & OTHERS & 3 - Applicant(s)
Versus
THE ASSISTANT COLLECTOR SURAT & 1 - Respondent(s)

==========

Appearance :
MR DD VYAS for Applicant(s) : 1 - 4.
MS SEJAL K MANDAVIA for Respondent(s) : 1,
MR ASIM J PANDYA for Respondent(s) : 1,
(MR JAYANT PATEL) for Respondent(s) : 1,
MR.HL JANI APP for Respondent(s) : 2,

==========

CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 22/03/2007

ORAL JUDGMENT

1. Both these petitions invoking Articles 226 and 227 of the Constitution are filed by the original accused persons and the original complainant in Criminal Case No.879 of 1989

pending in the Court of learned J.M.F.C., Bardoli, calling into question the order dated 06.08.1994 of learned Sessions Judge, Surat in Criminal Revision Application No.97 of 1990.

2. The relevant facts are that the Superintendent of Central Excise, Bardoli Range, made the complaint in the said Criminal Case No.879 of 1989 against the four petitioners in Special Criminal Application No.1701 of 1994. Those petitioners were, by order dated 02.05.1990, discharged by learned J.M.F.C. on the ground that the complaint was not maintainable. The Assistant Collector, Central Excise, preferred revision application which was allowed by the impugned order dated 06.08.1994 with a direction to proceed further with the criminal case. That order was based on the legal proposition that the stage for entertaining an application for discharge of accused persons was not reached, even as no evidence was recorded in the trial court. Learned Sessions Judge had not entered into merits of the plea sought to be

agitated by the accused persons in their application Exh.20 before the trial court; and, therefore, could not be taken to have made binding observations on that aspect of the matter.

3. During the course of arguments, it was conceded by learned counsel Mr.D.D. Vyas that, in view of the recent decision of the Supreme Court in **Adalat Prasad V/s. Rooplal Jindal and others [(2004)7 SCC 338]**, trial court could not have reversed the order to issue process and, in the facts of the case, could not have discharged the accused persons without recording any evidence. There was no dispute about the fact that original application Exh.20 was submitted in the trial court even before hearing for framing of charge. Therefore, in short, there was no reason to interfere with the impugned order of learned Sessions Judge for proceeding further with the trial in accordance with law.

4. Remarkably, the learned J.M.F.C. has not, in

his order set aside by the impugned order, spelt out the relation, if any, between the complaint for the alleged offences under Sections 9, 9B and 9C of the Central Excise and Salt Act, 1944 read with Rules 226, 52-A, 173(C)(2)(4) etc. of the Central Excise Rules, 1944 and the provision and proceedings under Section 11-A of the same Act for recovery of duties. Therefore, that order *prima facie* appears to be perverse and baseless, insofar as that order was based upon the alleged infirmity in the notice issued under Section 11-A of the Act.

5. Accordingly, the petition of the accused persons is required to be rejected and the petition of Assistant Collector of the Central Excise only praying to set aside the observations, does not survive in view of the observations herein that, the issue raised by the accused persons in their application Exh.20 was not dealt with or decided on merits in the impugned order. Even otherwise, as stated at the bar, the proceedings for recovery under Section

11A of the Central Excise and Salt Act, 1944 had culminated into the order dated 22.02.1997 of the Customs, Excise and Gold(Control) Appellate Tribunal, New Delhi in Appeal No.E/2862/88-A. It is needless to clarify that the trial court shall now proceed with the aforesaid Criminal Case No.879 of 1989 as expeditiously as practicable without being influenced by any observations made in the impugned order and that the accused persons shall have the liberty to make appropriate application at the appropriate stage. With these observations, Special Criminal Application No.1701 of 1994 is rejected and Special Criminal Application No.183 of 1996 is disposed as infructuous in view of the aforesaid observations. Rule is discharged in both the petitions and interim relief is vacated with no order as to costs.

(D.H.WAGHELA, J.)

Hitesh